

BEFORE THE TENNESSEE DEPARTMENT OF EDUCATION

IN THE MATTER OF: 

JEFFERSON COUNTY SCHOOL SYSTEM,

Petitioner,

VS.



Respondent.

No. 01-25

MEMORANDUM OPINION AND FINAL ORDER

JOHN W. CLEVELAND
Administrative Law Judge
TENNESSEE DEPARTMENT OF EDUCATION
120 W. Morris Street
Sweetwater, Tennessee 37874
Phone: 423/ 337-2111

August 20, 2001

MEMORANDUM OPINION

No. 01-25

Introduction

This cause came to be heard on May 22, 2001, before the Honorable John W. Cleveland, Administrative Law Judge for the Tennessee Department of Education, upon the Due Process Hearing Request filed by the School System, the testimony of witnesses and the exhibits filed by the School System. The Petitioner was present and represented by counsel, but the Respondent did not appear. Following the hearing, the transcript was timely produced by the School System.

Identifying information appears on the cover page of this Opinion and on the Final Order, which incorporates this Opinion and is filed with this Opinion. To preserve the parties' privacy in compliance with the Federal Educational Right to Privacy Act ("FERPA")¹, the parties, the schools, the witnesses and other identifying information are referred to by general descriptions, *e.g.*, the or this "Student," the "School System," the "Supervisor of Special Education." Publication of the cover page of this Memorandum Opinion and Final Order, the Final Order or other identifying information violates federal law.

References to the record of the due process hearing in this matter appear in endnotes, *i.e.*, Exhibit 3, Transcript Page 69, Line 42, which do not contain identifying information, and may be published with this Memorandum Opinion, in the user's discretion.

Notice, Default and Opportunity for Rehearing

Notice of the time and place for this hearing at 9:00 a.m. on May 22, 2001, at the building where the Student attends school. The Student's mother acknowledged her notice with a telephone call to the office of the Administrative Law Judge. The School System, represented by their attorney, Charles Cagle, appeared ready to begin the hearing at the scheduled time of 9:00 a.m., May 22, 2001, but neither parent, any representative of either parent nor any other person appeared to represent the interests of either parent or the Student in this matter. The hearing commenced at 9:30 a.m. upon the due process hearing request filed by the School System on May 1, 2001, alleging that the School System suspects the Student had a disability and the parent will not consent to an initial assessment.

The School System's oral motion for default judgment was granted upon the condition that the parent(s) will have the period of time within which they can appeal this decision to state court or U.S. District Court in which to move to re-open this proceeding for reconsider and to actually participate in a hearing itself without the necessity of actually filing their appeal; however, this Memorandum Opinion and Final Order shall be a final, appealable decision of the Commissioner of the Tennessee Department of Education when it is entered. If, when the time expires for the parent(s) can file an appeal of this matter to state court or U.S. District Court, and the parent(s) has neither requested reconsideration nor appealed, this Memorandum Opinion and Final Order shall be absolutely final and unappealable, that they could ask to reopen the record and to present whatever proof they might want and to participate, and the default judgment will be the final Order of the Commissioner at that time.

FINDINGS OF FACT

Early Screening Inventory.

All kindergartners entering the School System are screened when they pre-register in the spring. This Student was screened on May 7, 1999. The Student had just turned five years old. In one screening, the Student was shown a particular formation of blocks, and he was asked to build that formation with blocks he has in front of him. The Student failed to replicate the formation. After the teacher built the formation for the Student, he was able to copy the teacher's formation.

In a screening for visual motor skills, the Student was supposed to draw a circle, a cross, a square and a triangle. The only one he drew successfully was a circle. His square looked like a circle, his triangle looked like an E with a lot of lines or a fence, and the cross also looks just like he represented the triangle. He was to draw a picture of a person. Five points are awarded for a drawing with five or more body parts. The Student got one point for his drawing. He drew a head with hair coming straight out of it, arms coming out of the head and legs coming straight out of the head.

The Student was screened for visual sequential memory. He was shown two cards, the cards were removed and then he was asked to name the two cards. The Student failed all four passes of that screening. In another screening, the Student was asked to count ten blocks. He failed to count ten blocks, so he was asked to count five blocks. He did count five blocks, but in the second part of the screening the Student was immediately asked to say how many blocks there were, and the Student could not say there were five blocks. In another screening, the Student was shown several pictures. He was given a picture of several objects and asked to talk about the object beyond merely naming it. When shown a picture of a ball; the Student said "ball". When shown a picture of a button; the Student said "wheel." When shown a picture of a block; the Student said "square." When shown a picture of a car, the Student said "van, yellow, wheels, car, goes onto back."

In a screening for auditory memory, the screener would say two numbers, for instance, "9, 3," and the Student was asked to immediately repeat the two numbers "9, 3." The Student took three attempts to pass this screening.

The average inventory score is in the 20 to 23 range. The accepted screening score is 18 or more. A score in the 14 to 17 range usually results in a re-screening. The Student's total screening score was 17, but apparently there was no re-screening.

Reading, Writing and Spelling

The Student's regular first grade teacher holds a Bachelor's Degree in History Francis Marion University in Florence, South Carolina, and she has a secondary certification in Early Childhood Certification. She has taught for eleven years. When she taught the Student, she observed that the Student did not know most of the letters of the alphabet. He knew only a few letter sounds. He did not know his numbers through 20. He could not stay on task. He could not grasp oral directions. He could not follow directions. He did not have a concept of words. To him, words appeared to only be letters. In copying from the board, he could not distinguish words as separate groups. He would just copy the letters down. He slept a lot in class. He was unable to pay attention when the class was having a lesson, and he generally seemed to be lost.

As a first-grader, the Student had completed kindergarten, and he was asked to copy sentences straight off the board. He could not use capital letters where they were appropriate. The Student was unable to copy the sentences with spacing so the letters could be recognized as separate words. He was unable to capitalize

or punctuate properly. He does not understand that a word cannot begin on one line and end on the other (not hyphenation). His letters float above the line rather than follow it. His teacher used words that the Student had been exposed to in his reading book, hoping that he would be able to recognize the words, but he is not able to recognize them as separate words.

The Student is not able to read sentences or stories or directions and do his work by himself. He is unable to write his answers. If his teacher reads him questions, he can answer orally many times, but he has no concept of how to write answers down, whereas other first-grade students can read directions, read sentences and write down an answer. If his teacher does not read to instructions and questions to the Student, and write down the Student's answers for him, the Student cannot do his work at all. Even then, his teacher can recognize only some of what he has written. He does follow the line better than he did on November 11, 2000. He continues to mix capital and lower case letters, he still does not space between words. He still does not have a good concept of using the lines correctly. The Student does not capitalize or use punctuation, expected of every first grader.

The third six weeks the Student failed reading, math and spelling, and he had an unsatisfactory in handwriting. The fourth six weeks he failed reading, math and spelling. The fifth six weeks he again failed reading, he had a D- in math, he had a D in spelling and there's an asterisk beside the D indicating that the teacher modified the spelling grade from a failing grade. The Student's work habits were unsatisfactory through the year. The Student's failed all of his tests except reading tests, which he only passed when his teacher read him the questions and wrote down his answers.

Math

The Student does a bit better in math than he does in reading. He is able to do single digit addition, but he counts on his fingers. The Student did not do well on the tests mainly because the test questions required more reasoning than the drills. He can work better with numbers alone – without concepts. He can do the arithmetic correctly, but he can not read the numbers. When the class progressed to double digit subtraction and addition towards the end of the year, the Student was totally lost again.

Behavior

The Student is a very sweet, very loving, kind child. He takes up for other kids. At the beginning of the year, the Student was very introverted, hardly ever spoke and he often seemed to be in his own little world. Towards the end of the year, the Student started coming out of his shell, and the last few weeks of the year, the Student was very talkative. The Student comes from a loving family in which the children show a lot of affection to each other, and he is very attached to his mother. The Student relates appropriately with other children, and he seems to be emotionally secure.

Referral

On October 18, 2000, the Student was referred for special education. The referral recited that the Student does not know all the letters and very few letter sounds, does not know numbers to 20, has a hard time retaining information and transferring work from the board to paper. His fine motor skills are poor, and he has trouble staying on task.

The special education teacher at the Student's school holds a Bachelor's Degree in special education from Carson-Newman College, and she is certified for K-12 in special education. The special education teacher was part of an S-Team, including the student's regular education teacher, the principal; the resource teacher, the classroom teacher and the school guidance counselor, convened to discuss some of the difficulties the Student was experiencing in the classroom and come up with some modifications that might help the

Student. The S-Team recommended screenings to disclose whether there is a need for further evaluation or the Student can be served in a regular classroom without special education. On November 15, 2000, the S-team recommended screening for language difficulties, visual perception difficulties, achievement and cognitive evaluation functioning, *i.e.*, an IQ screen.

On November 27, 2000, the Student's mother denied permission for an initial evaluation. On March 6, 2001, the Student's Mother again denied permission for an initial evaluation.

CONCLUSIONS OF LAW

IDEA² requires that Tennessee, as a recipient of federal assistance thereunder, ensure that each disabled student in the state receive a "free appropriate public education."³ IDEA mandates that participating states provide such education for all children "regardless of the severity of their handicap."⁴ In pertinent part, the Act defines a free appropriate public education as:

special education and related services which (A) have been provided at public expense, under public supervision and direction, and without charge. and (D) are provided in conformity with the individualized education program⁵

The Tennessee Regulations promulgated pursuant to IDEA, Chapter 0520-1-9 entitled "Special Education Programs and Services" provides, in pertinent part, as follows:

- (2) The local system shall demonstrate to the satisfaction of the Department that it does all of the following:
 - (a) Identifies, locates ***and evaluates*** all children who are suspected of having disabilities, ... regardless of the severity of their disabilities, and who may be in need of special education and related services.

0520-1-9-.03(2)(a) *emphasis added*.

If consent for an evaluation is refused by the parents, the local school system may pursue an evaluation through mediation and/or due process.

0520-1-9-.05(4).

Parents may refuse consent for an evaluation or reevaluation but the local school system may continue to pursue those evaluations by using due process procedures.

0520-1-9-.14(5)(d).

[T]he LEA may initiate a hearing on matters relating to ... evaluation ... when a child is ... denied evaluation....

0520-1-9-.14(9)(a)(2)(i).

The pattern of deficiencies in the Student's performance exhibit classic symptoms of a language impairment and strongly suggests that there should be an evaluation to determine whether the Student has a language impairment. The Student's inability to follow lines in writing words also suggest some visual perceptual problems. Because the Student exhibits symptoms of several distinct disabilities areas, the School System requested a full battery psychological and cognitive assessment. We always vision, hearing, screening. Speech and language screening and evaluation of the Student's visual perception were requested because they are related to the suspected language impairment disability. The assessments requested by the School System are no broader than is necessary to determine what the Student's deficiencies are.

CONCLUSION

Based on the foregoing findings of fact and conclusions of law, the School System reasonably suspects the Student of having one or more disabilities, and the School System must evaluate the Student to determine whether the Student has a disability and is in need of special education and related services under IDEA.

JOHN W. CLEVELAND
Administrative Law Judge

-
1. 20 U.S.C. §1232(g).
 2. *The Act has been amended and reauthorized since its initial enactment in 1970. This Opinion refers to the original Education of the Handicapped Act, 20 U.S.C. §§ 1400-1485 and all of its amendment, as well as the re-authorization as the Individuals with Disabilities Education Act (IDEA-97), as IDEA.*
 3. 20 U.S.C. §1412(1).
 4. 20 U.S.C. §1412(2)(C).
 5. 20 U.S.C. § 1401(18).